

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed July 28, 2005 (Paper No. 25). Upon entry of this response, claims 1-8, 10-19, 21-25, 27-30, and 32-44 are pending in the application. In this response, claims 1-2, 8, 13, 19, 24, 30, and 34-38 have been amended, claims 41-44 have been added, and claims 9, 20, 26, and 31 have been cancelled. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. Rejection of Claims 1-35 under 35 U.S.C. §112, First Paragraph

Claims 1-35 have been rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Office Action states that “the specification does not describe anywhere the ‘corresponding summary period’ associated with each of the plurality of performance parameters.” (Office Action, p. 2.)

While Applicant does not necessarily agree with the grounds of the rejection, independent claims 1, 12, 23, 34, and 36-41 have been amended to clarify the claimed features. Claims 1, 12, 23, 34, and 36-41 now recite “a plurality of per-summary-period performance parameter groups, each group corresponding to actual performance of said communication device during each one of said summary periods, each performance parameter in the group corresponding to a performance category within the summary period.” Applicant respectfully submits that this feature is described at least in FIG. 4 and the accompanying text (pages 17-20) of the instant application. Applicant particularly draws the Examiner’s attention to the columns of the table, where each column is comprised of a group of cells.

Applicant respectfully submits that the amendment clearly overcomes the rejection of claims 1-35, and requests that the rejection be withdrawn.

2. Rejection of Claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32, and 34-41 under 35 U.S.C. §102

Claims 1, 12, and 23 have been rejected under §102(b) as allegedly anticipated by *Engel et al.* (U.S. 6,320,585). Applicant respectfully submits that this rejection has been overcome by claim amendments made herein. A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

A. Claims 1, 12, and 23

i. *Engel et al.* does not teach “specifying a plurality of summary periods, each said summary period defining a different portion of said reporting period”

The system of *Engel et al.* discusses three different time intervals or periods: a polling interval; a collection period; and a display period. The Office Action does not clearly explain which of these three items are alleged to correspond to the claimed “plurality of summary periods.” In alleging that *Engel et al.* teaches the above feature, the Office Action cites various passages in *Engel et al.*, referring to all three periods. (Office Action, pages 5-6.) Therefore, if this rejection is maintained in a subsequent Office Action, Applicant requests that the Office Action clearly explain what teaching in *Engel et al.* is alleged to correspond to the claimed “plurality of summary periods.”

Applicant first notes that claims 1, 12, and 23 define a relationship between the “plurality of summary periods” and the “reporting period,” namely, that each summary period defines “a different portion of said reporting period.” Thus, the time period in *Engel et al.* that is alleged to correspond to the “plurality of summary periods” must define a portion of one of the other two time periods. Applicant will now explain why none of the time intervals or periods discussed in *Engel et al.* corresponds to the claimed “plurality of summary periods.”

Engel et al. describes a display period: “the bandwidth utilization chart 32...displays how bandwidth utilization was distributed over time for each of the segments in the network for a user selectable period of time.” (Col. 4, lines 50-55.) *Engel et al.* teaches specifying one display period, not a plurality. Also, *Engel et al.* does not teach that the display period defines a portion of the collection period. Although Applicant admits that *Engel et al.*’s display period is contained within the collection period, this is not equivalent to the specific language chosen by Applicant, which requires that one period define a portion of the other. For at least these reasons, *Engel et al.*’s display period cannot correspond to the claimed “plurality of summary periods.”

Engel et al. describes a collection period: “a software program...then processes the utilization and performance data that has been collected for a preselected period of time to generate reports.” (Col. 4, lines 35-40.) *Engel et al.* teaches specifying one collection period, not a plurality. Furthermore, *Engel et al.* does not teach that the collection period defines a portion of the display period. For at least these reasons, *Engel et al.*’s collection period cannot correspond to the claimed “plurality of summary periods.”

Engel et al. describes a polling interval: “the console continuously polls all of the segment monitors for various statistics that are maintained by the monitor (step 100.) The polling takes place at a regular polling interval...” (Col. 5, lines 59-65.) Applicant will assume, *argendo*, that the user can specify the polling interval. Even so, *Engel et al.* clearly contemplates one polling interval, not a plurality. Furthermore, specifying multiple polling periods (e.g. 8:00-8:15, 8:15-8:30, etc.) cannot be inferred from the teachings in *Engel et al.*: because the polling interval is regular, specifying multiple polling periods would serve no useful purpose. For at least these reasons, *Engel et al.*’s polling interval cannot correspond to the claimed “plurality of summary

periods.” In summary, *Engel et al.* does not disclose, teach, or suggest the claimed “plurality of summary periods.”

ii. *Engel et al.* does not teach “presenting and displaying each of said performance parameter groups in association with the corresponding summary period for the group”

Engel et al. discloses generating a report, shown in FIG. 2, showing bandwidth utilization for multiple LAN segments over a “relevant period of time.” (Col. 6, lines 20-55; Col. 7, lines 8-55.) The stacked bar chart in FIG. 2 shows bandwidth utilization, expressed as a percentage of maximum, varying throughout the “relevant period of time.” This chart shows the following data for LAN segment 1: for about 65% of the “relevant period of time,” the segment was less than 10% utilized; and for about 30% of the “relevant period of time,” the segment was 10-20% utilized.

The Office Action alleges the stacked bar chart in *Engel et al.* corresponds to a “means for presenting and displaying.” (Office Action, p. 3.) However, in this chart, all the data corresponds to a single time period. In contrast, Applicant’s claimed invention, as defined in amended claims 1, 12, and 23, shows multiple performance parameter groups, each one shown in association with the corresponding summary period for the group. Even assuming, *arguendo*, that the segments in FIG. 2 correspond to performance parameter groups, all groups are associated with the same (single day) period.

iii. Conclusion

For at least the reasons discussed above, *Engel et al.* does not disclose, teach, or suggest the above-described features recited in amended claims 1, 12, and 23. Therefore, the amended claims overcome the rejection, and the rejection should be withdrawn.

B. Claims 36 and 39

i. *Engel et al.* does not teach “a plurality of summary periods, each said summary period defining a different portion of said reporting period”

The system of *Engel et al.* discusses three different time intervals or periods: a polling interval; a collection period; and a display period. The Office Action does not clearly explain which of these three items allegedly correspond to the claimed “plurality of summary periods.” In alleging that *Engel et al.* teaches the above feature, the Office Action cites various passages in *Engel et al.*, referring to all three periods. (Office Action, pages 5-6.) Therefore, if this rejection is maintained in a subsequent Office Action, Applicant requests that the Office Action clearly explain what teaching in *Engel et al.* is alleged to correspond to the claimed “plurality of summary periods.”

Applicant first notes that claims 36 and 39 define a relationship between the “plurality of summary periods” and the “reporting period,” namely, that each summary period defines “a different portion of said reporting period.” Thus, the time period in *Engel et al.* that is alleged to correspond to the “plurality of summary periods” must define a portion of one of the other two time periods. Applicant will now explain why none of the time intervals or periods discussed in *Engel et al.* corresponds to the claimed “plurality of summary periods.”

Engel et al. describes a display period: “the bandwidth utilization chart 32...displays how bandwidth utilization was distributed over time for each of the segments in the network for a user selectable period of time.” (Col. 4, lines 50-55.) *Engel et al.* teaches specifying one display period, not a plurality. In addition, *Engel et al.* does not teach that the display period defines a portion of the collection period. Applicant admits that *Engel et al.*’s display period is contained within the collection period, but this is not equivalent to the specific language chosen by

Applicant, which requires that one period define a portion of the other. For at least these reasons, *Engel et al.*'s display period cannot correspond to the claimed "plurality of summary periods."

Engel et al. describes a collection period: "a software program...then processes the utilization and performance data that has been collected for a preselected period of time to generate reports." (Col. 4, lines 35-40.) *Engel et al.* teaches specifying one collection period, not a plurality. Furthermore, *Engel et al.* does not teach that the collection period defines a portion of the display period. For at least these reasons, *Engel et al.*'s collection period cannot correspond to the claimed "plurality of summary periods."

Engel et al. describes a polling interval: "the console continuously polls all of the segment monitors for various statistics that are maintained by the monitor (step 100.) The polling takes place at a regular polling interval..." (Col. 5, lines 59-65.) Applicant will assume, *argendo*, that the user can specify the polling interval. Even so, *Engel et al.* clearly contemplates one polling interval, not a plurality. Furthermore, specifying multiple polling periods (e.g. 8:00-8:15, 8:15-8:30, etc.) cannot be inferred from the teachings in *Engel et al.*: because the polling interval is regular, specifying multiple polling periods would serve no useful purpose. For at least these reasons, *Engel et al.*'s polling interval cannot correspond to the claimed "plurality of summary periods."

For at least the reasons discussed above, *Engel et al.* does not disclose, teach, or suggest the above-described features recited in amended claims 36 and 39. Therefore, the amended claims overcome the rejection, and the rejection should be withdrawn.

C. Claims 37, 38, 40, and 41

i. *Engel et al.* does not teach “a plurality of summary periods, each said summary period defining a different portion of said reporting period”

The system of *Engel et al.* discusses three different time intervals or periods: a polling interval; a collection period; and a display period. The Office Action does not clearly explain which of these three items allegedly correspond to the claimed “plurality of summary periods.” In alleging that *Engel et al.* teaches the above feature, the Office Action cites various passages in *Engel et al.*, referring to all three periods. (Office Action, p. 5-6.) Therefore, if this rejection is maintained in a subsequent Office Action, Applicant requests that the Office Action clearly explain exactly what teaching in *Engel et al.* is alleged to correspond to the claimed “plurality of summary periods.”

Applicant first notes that claims 37, 38, 40, and 41 define a relationship between the “plurality of summary periods” and the “reporting period,” namely, that each summary period defines “a different portion of said reporting period.” Thus, the time period in *Engel et al.* that is alleged to correspond to the “plurality of summary periods” must define a portion of one of the other two time periods. Applicant will now explain why none of the time intervals or periods discussed in *Engel et al.* corresponds to the claimed “plurality of summary periods.”

Engel et al. describes a display period: “the bandwidth utilization chart 32...displays how bandwidth utilization was distributed over time for each of the segments in the network for a user selectable period of time.” (Col. 4, lines 50-55.) *Engel et al.* teaches specifying one display period, not a plurality. Also, *Engel et al.* does not teach that the display period defines a portion of the collection period. Although Applicant admits that *Engel et al.*’s display period is contained within the collection period, this is not equivalent to the specific language chosen by Applicant,

which requires that one period define a portion of the other. For at least these reasons, *Engel et al.*'s display period cannot correspond to the claimed "plurality of summary periods."

Engel et al. describes a collection period: "a software program...then processes the utilization and performance data that has been collected for a preselected period of time to generate reports." (Col. 4, lines 35-40.) *Engel et al.* teaches specifying one collection period, not a plurality. Furthermore, *Engel et al.* does not teach that the collection period defines a portion of the display period. For at least these reasons, *Engel et al.*'s collection period cannot correspond to the claimed "plurality of summary periods."

Engel et al. describes a polling interval: "the console continuously polls all of the segment monitors for various statistics that are maintained by the monitor (step 100.) The polling takes place at a regular polling interval..." (Col. 5, lines 59-65.) Applicant will assume, *argendo*, that the user can specify the polling interval. Even so, *Engel et al.* clearly contemplates one polling interval, not a plurality. Furthermore, specifying multiple polling periods (e.g. 8:00-8:15, 8:15-8:30, etc.) cannot be inferred from the teachings in *Engel et al.*: because the polling interval is regular, specifying multiple polling periods would serve no useful purpose. For at least these reasons, *Engel et al.*'s polling interval cannot correspond to the claimed "plurality of summary periods." In summary, *Engel et al.* does not disclose, teach, or suggest the claimed "plurality of summary periods."

ii. *Engel et al.* does not teach a "processor...wherein said processor recommends a performance configuration for said communication device based upon said plurality of trend parameters" or "means for recommending a performance configuration for said communication device based upon said plurality of trend parameters"

The system of *Engel et al.* does not make recommendations based on trend parameters. Even if a human (e.g., network administrator) can use the information presented by the system to decide on an appropriate performance configuration, Applicant's invention as defined in claims

37, 38, 40, and 41 recites specific structure (“a processor”, “means”) that performs the function, and this is not disclosed in *Engel et al.*

iii. Conclusion

For at least the reasons discussed above, *Engel et al.* does not disclose, teach, or suggest the above-described features recited in amended claims 37, 38, 40, and 41. Therefore, the amended claims overcome the rejection, and the rejection should be withdrawn.

D. Alleged Finding of Inherency

Applicants traverse the alleged finding of inherency in the rejection of claims 36-41, which states that:

[It] is inherent that the network administrator will use the days to reach a present threshold of a parameter of interest such as capacity utilization, to determine when and how much the network resources should be augmented and how the network should be reconfigured to support the changing patterns of usage and greater usage demand.”
(Office Action, section 6.5, p. 10.)

In accordance with *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2D (BNA) 1949, 1950-51 (Fed. Cir. 1999), Applicant traverses that finding as being inadequate to show why the claimed feature is *necessarily* present in the reference. The network administrator could use the bandwidth chart for purposes other than reconfiguring the network. Consequently, because of the lack of extrinsic evidence required under *In re Robertson*, the statement in the Office Action is merely conclusory and not adequately supported, and the rejection of claims 36-41 is improper.

E. Claims 2, 8-10, 12, 19-21, 24, 30-32, and 35

Since claims 1, 12, and 23 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 2, 8-10, 12, 19-21, 24, 30-32, and 35 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d

1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims claims 2, 8-10, 12, 19-21, 24, 30-32, and 35 be withdrawn.

3. Rejection of Claims 3, 14, and 25 under 35 U.S.C. §103

Claims 3, 14, and 25 have been rejected under §103(a) as allegedly obvious over *Engel et al.* (U.S. 6,320,585) in view of *VanDevort* (U.S. 5,699,346). Applicant respectfully traverses this rejection. Since claims 1, 12, and 23 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 3, 14, and 25 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 3, 14, and 25 be withdrawn.

4. Rejection of Claims 4-7, 15-18, and 26-29 under 35 U.S.C. §103

Claims 3, 14, and 25 have been rejected under §103(a) as allegedly obvious over *Engel et al.* (U.S. 6,320,585) in view of *VanDevort* (U.S. 5,699,346) and further in view of *Grevious* (U.S. 6,167,310). Applicant respectfully traverses this rejection. Since claims 1, 12, and 23 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 4-7, 15-18, and 26-29 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 4-7, 15-18, and 26-29 be withdrawn.

5. Rejection of Claims 11, 12, and 33 under 35 U.S.C. §103

Claims 11, 12, and 33 have been rejected under §103(a) as allegedly obvious over *Engel et al.* (U.S. 6,320,585) in view of *Colmant et al.* (U.S. 6,144,662). Applicant respectfully traverses this rejection. Since claims 1, 12, and 23 are allowable for at least the reasons discussed above,

Applicant respectfully submits that claims 11, 12, and 33 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 11, 12, and 33 be withdrawn.

6. Newly Added Claims

Applicant submits that new claims 41-44 are allowable over the cited references for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant requests that the Examiner enter and allow the above new claims.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-8, 10-19, 21-25, 27-30, and 32-44 be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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